

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.W.P.No.5829 of 1993

Date of Decision:- 11.02.2009

Ashok Kumar and others

....Petitioner(s)

vs.

Presiding Officer, Labour Court,
Jalandhar and another

....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr.Surinder Sharma, Advocate
for the petitioners.

Mr.P.K.Mutneja, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (Oral)

In the present writ petition, challenge is to the award dated 18.3.1992 (Annexure P-9) vide which the Labour Court has come to the conclusion that the services of the workmen have not been terminated and they were very much the employees of the respondent-Management and, thus, the dispute as sought to be raised by the workmen did not exist as the enquiry proceedings were going on against them. Thus, the reference being pre-mature, it was answered against the workmen and in favour of the Management.

Counsel for the petitioners contends that the Labour Court has gone beyond the reference. He contends that the reference was whether termination of services of the 23 workmen who had preferred a demand notice on which references were sent for adjudication to the Labour Court,

was justified and in order and if not, to what relief/exact amount of compensation each of them is entitled to. He contends that the Labour Court instead of adjudicating upon the reference made to it has proceeded to hold that there was no termination of the workmen and in view of this, the reference was pre-mature. He submits that the workmen had not been allowed to work in the factory and they were not allowed to enter the premises due to which they could not perform their duties. This would lead to only one conclusion that their services had been terminated by the Management. He submits that this termination was abrupt without holding any proper enquiry as neither any notice was given nor any charge-sheet was issued nor any retrenchment compensation paid to them. Therefore, he contends that the termination is not in accordance with law and the provisions governing the services of the workmen i.e. the Industrial Disputes Act, 1947 have been violated with impunity. He relies upon the statements of the workmen to contend that they have categorically stated before the Labour Court that they have not been allowed to continue in service as they were not allowed to perform their duties. In this view of the matter, he submits that the award passed by the Labour Court cannot be sustained as the requirement of the reference was to adjudicate upon the issues as to whether the termination of the services of the workmen was in order and to what relief and amount of compensation they were entitled to. That having not been done, the present writ petition deserves to be allowed. He further relies upon an award dated 21.12.1992 (Annexure P-10) passed by the Labour Court, Jalandhar, of a co-worker wherein a reference preferred by a similarly situated employee had been answered in favour of the workmen although the same grounds which have been taken by the

employer as in the case of the petitioners were rejected by the Labour Court. He further contends that a writ petition preferred by the respondent-Management against this award i.e. C.W.P.No.7289 of 1993 was dismissed by a Division Bench of this Court on 12.1.1994. However, liberty was granted to the Management to proceed with the enquiry referred to in the award and to pass such order as it deemed appropriate in accordance with law. He, on this basis, presses that similar relief be granted to the petitioners.

Counsel for the respondent, on the other hand, contends that the present writ petition with regard to petitioners No.21 and 22 is not maintainable as both these workmen had not appeared before the Labour Court to support their assertions made in their demand notice. This factual position having not been disputed by the counsel for the petitioner, writ petition on behalf of petitioners No.21 and 22 Vas Dev, Typist Yashpal Singh, Turner respectively, is held to be not maintainable and dismissed as such on the ground that the Labour Court in its award itself has on this very ground answered the reference against these petitioners.

Counsel for the respondent has further submitted that the award passed by the Labour Court is in accordance with law. He submits that before the Conciliation Officer the stand of the Management was that the workmen have been charge-sheeted and enquiry proceedings were pending against them and the record in that regard was also produced before the Conciliation Officer. He contends that the stand of the Management from the very inception was that the services of the workmen have not been terminated and since the workmen were still in service when the reference was made, there could have been no dispute under Section 10 of the Act.

After the said reference had been made by the Appropriate Government, the Labour Court on going through the records and the evidence led before it, has come to a conclusion that the reference was pre-mature on the ground that the termination of the workmen was not there.

I have heard learned counsel for the parties and with their able assistance have gone through the records of the case as well as the impugned award. A perusal of the same would clearly show that MW-1 Shri Ranjit Singh, a Clerk of the local Labour Office, had appeared before the Labour Court and produced the records of the conciliation proceedings in the form of Exhibit M-1. Shri J.K.Sehgal, MW-2 had appeared before the Labour Court and produced various documents showing the charge-sheets and the notices issued to different workmen in relation to initiation of domestic enquiries against them. Even during the pendency of the proceedings before the Labour Court, it is apparent that the enquiries were pending before the workmen. The workmen in their cross-examination have admitted that show cause notices and charge-sheets regarding initiation of enquiries against them were either received by them or the said charge-sheets were dispatched on their correct addresses. However, this does indicate that the workmen were aware of the domestic enquiries being initiated and continuation thereof against them. Despite this knowledge, the workmen had proceeded to raise an industrial dispute claiming therein that their services have been terminated. The finding as recorded by the Labour Court, therefore, cannot be faulted with that the reference was pre-mature as the services of the workmen were not terminated on the date(s) alleged by them or on the date(s) when the reference was made. That being so, the only conclusion which can be arrived at and has rightly been reached by the

Labour Court is that the reference was pre-mature. That being the position, no illegality can be said to have been committed by the Labour Court in passing Award dated 21.12.1992 (Annexure P-9).

The contention of the counsel for the petitioners that in the case of similarly placed employees, the reference has been answered in favour of the workmen and against the Management although the grounds taken therein were on the same lines as in the present proceedings. A perusal of the said award (Annexure P-10) would show that the Court has proceeded to decide the case as per the pleadings before the said Court. This order, when challenged before this Court in C.W.P.No.7289 of 1993 which came to be decided on 12.1.1994, this order also says that the enquiries which has been referred to in the award were still continuing against the workmen and the Court has also given liberty to the Management to proceed with the enquiries and to pass such orders as it deems appropriate in accordance with law. This further shows that as a matter of fact, there was no termination in that case as well. However, this Court in exercise of its discretionary powers under Article 226 of the Constitution of India refrained itself from exercising its writ jurisdiction.

In view of the above, the present writ petition is without any merit and is hereby dismissed.

However, a liberty is given to the Management to proceed in accordance with the findings, if any, against the workmen.

February 11, 2009
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether referred to Reporters _____ Yes/No